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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/050,080 | 01/15/2002 | Steven M. Bellinger | 29766-68612 | 6261 |
| 23643 | 7590 | 04/29/2004 | EXAMINER | |
| BARNES & THORNBURG 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204 | | | KWON, JOHN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3747 | |

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,080

Applicant(s)

BELLINGER, STEVEN M.

Examiner

John T. Kwon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,36-45 and 71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,36-45 and 71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 9, 10, 36, 37, 40, 44, 45 and 71 are rejected under 35 U.S.C. 102(b) as being anticipated by Middleton (US 5 553 589). Middleton discloses an engine speed control system for an internal combustion engine having a speed sensor (32) producing a vehicle speed signal to a controller (52), a fueling signal (56) is produced by the controller as a function of a throttle position sensor (60) and the engine speed value. A means for controlling fuel is depending upon the speed difference between a first value/ no-load fueling condition and a second value/ a full-load fueling condition for any constant throttle command value (Col. 2, lines 50-67, claims 1 and 11).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 3 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middleton (US 5 553 589) in view of Bellinger (US 6 436 005). Middleton discloses an engine speed control system for an internal combustion engine having a speed sensor (32) producing a vehicle speed signal to a controller (52), a fueling signal (56) is produced by the controller as a function of a throttle position sensor (60) and the engine speed value. A means for controlling fuel is depending upon the speed difference between a first value/ no-load fueling condition and a second value/ a full-load fueling condition for any constant throttle command value (Col. 2, lines 50-67, claims 1 and 11). However, Middleton does not show the use of a gear ratio value to adjust the engine speed. Bellinger shows the use of a gear ratio value to adjust the engine speed in an internal combustion engine is old and well known in the art. Since the prior art references art from the same field of endeavor, the purpose disclosed by Bellinger would have been recognized in the pertinent art of Middleton. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the device of Middleton with the gear ratio value as taught by Bellinger.

Claims 4, 6-8, 39 and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middleton (US 5 553 589) in view of Bellinger (US 6 042 505). Middleton discloses an engine speed control system for an internal combustion engine having a speed sensor (32) producing a vehicle speed signal to a controller (52), a fueling signal (56) is produced by the controller as a function of a throttle position sensor (60) and the engine speed value. A means for controlling fuel is depending upon the speed difference between a first value/ no-load fueling condition and a second value/ a full-load fueling condition for any constant throttle command

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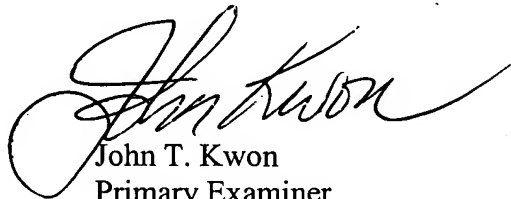
value (Col. 2, lines 50-67, claims 1 and 11). However, Middleton does not show the use of the road condition to adjust the engine speed. Bellinger shows the use of the road condition to adjust the engine speed in an internal combustion engine is old and well known in the art. Since the prior art references art from the same field of endeavor, the purpose disclosed by Bellinger would have been recognized in the pertinent art of Middleton. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the device of Middleton with the road condition as taught by Bellinger.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John T. Kwon whose telephone number is (703) 308-1046. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on (703) 308-1946. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7766.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.


John T. Kwon
Primary Examiner
Art Unit 3747

April 27, 2004